

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-49407 CL

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████, mother, appeared on the Appellant's behalf. ██████████, Appeals Review Officer, represented the Department. ██████████, Michigan Department of Community Health (MDCH) Contract Manager for Diaper and Incontinence Program, appeared as a witness for the Department.

ISSUE

Did the Department properly deny coverage of incontinent wipes?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████ year-old Medicaid beneficiary.
2. On ██████████, the Department's contractor for the Diaper and Incontinent Supplies Program, conducted a telephone nursing assessment for a two year renewal for incontinent supplies. ██████████ notes indicate it was reported that the Appellant is 95% toilet trained for urine due to diligent toilet training, is now 100% continent of bowel and managing well using only 1 pull-on per day. The assessment notes did not address whether nor not the Appellant leaves the home, is in a school program, or any incontinence needs outside the home. (Exhibit 1, page 6)
3. On ██████████, the Department sent the Appellant an Adequate Action Notice indicating that incontinent wipes shall not be authorized

because the information provided did not support coverage of this service.
(Exhibit 1, page 5)

4. On ██████████, the Appellant's Request for Hearing was filed.
(Exhibit 1, page 4)

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The Department policy regarding coverage of incontinence products, including pull-on briefs, is addressed in the MDCH Medicaid Provider Manual (MPM):

2.19 Incontinent Supplies

Definition

Incontinent supplies are items used to assist individuals with the inability to control excretory functions.

The type of coverage for incontinent supplies may be dependent on the success or failure of a bowel/bladder training program. A bowel/bladder training program is defined as instruction offered to the beneficiary to facilitate:

- Independent care of bodily functions through proper toilet training.
- Appropriate self-catheter care to decrease risk of urinary infections and/or avoid bladder distention.
- Proper techniques related to routine bowel evacuation.

Standards of Coverage (Applicable to All Programs)

Diapers, incontinent pants, liners, and belted/unbelted undergarments without sides are covered for individuals age three or older if both of the following applies:

- A medical condition resulting in incontinence and there is no response to a bowel/bladder training program.
- The medical condition being treated results in incontinence, and beneficiary would not benefit

from or has failed a bowel/bladder training program.

Pull-on briefs are covered for beneficiaries age 3 through 20 when there is the presence of a medical condition causing bowel/bladder incontinence, and one of the following applies:

- The beneficiary would not benefit from a bowel/bladder program but has the cognitive ability to independently care for his/her toileting needs, **or**
- The beneficiary is actively participating and demonstrating definitive progress in a bowel/bladder program.

Pull-on briefs are covered for beneficiaries age 21 and over when there is the presence of a medical condition causing bowel/bladder incontinence and the beneficiary is able to care for his/her toileting needs independently or with minimal assistance from a caregiver.

Pull-on briefs are considered a short-term transitional product that requires a reassessment every six months. The assessment must detail definitive progress being made in the bowel/bladder training. Pull-on briefs covered as a long-term item require a reassessment once a year or less frequently as determined by MDCH. Documentation of the reassessment must be kept in the beneficiary's file.

Incontinent wipes are covered when necessary to maintain cleanliness outside of the home.

Standards of Coverage (Not Applicable to CSHCS Only Beneficiaries)

Intermittent catheters are covered when catheterization is required due to severe bladder dysfunction. **Hydrophilic-coated intermittent catheters** are considered for individuals that have Mitrofanoff stomas, partial stricture or small, tortuous urethras.

Intermittent catheters with insertion supplies are covered for beneficiaries who have a chronic urinary dysfunction for which sterile technique is clinically required.

Documentation

Documentation must be less than 30 days old and include the following:

- Diagnosis of condition causing incontinence (primary and secondary diagnosis).
- Item to be dispensed.
- Duration of need.
- Quantity of item and anticipated frequency the item requires replacement.
- For pull-on briefs, a six-month reassessment is required.

*MDCH Medicaid Provider Manual,
Medical Supplier Section,
July 1, 2011, Pages 41-42.*

The Contract Manager referred to the policy outlining the standards of coverage for incontinence wipes, which are only covered to maintain cleanliness outside of the home. She testified that she called ██████████ for clarification of the assessment note and they indicated that the Appellant did not meet the criteria because the Appellant is basically toilet trained, only uses 1 pull-on per day, and is not incontinent on a daily basis. (Contract Manager Testimony and Exhibit 1, page 6) The Contract Manager also provided testimony indicating that for beneficiaries with daily incontinence, wipes would be covered to maintain cleanliness outside the home, such as children at school or adults at a daycare program. (Contract Manager Testimony)

The Appellant's mother disagrees with the denial and testified that she misunderstood what was meant by toilet training, as the success has only been due to getting the Appellant on the toilet every hour and a half. She stated that she does not always get reports from the school regarding the Appellant getting wet or soiled. The Appellant's mother explained that the Appellant is in a chair 100% of the time, cleanliness is important as he has previously had rashes and sores. She stated that they send the wipes to school for him to use there. (Mother Testimony)

The above cited Medicaid Provider Manual policy for incontinent supplies does not include a requirement for daily incontinence for any incontinent supply, including incontinent wipes. The Standards of Coverage for incontinent wipes only states that incontinent wipes are covered when necessary to maintain cleanliness outside of the home. The ██████████, telephone nursing assessment note is very brief, and does not indicate that the Appellant's mother was asked about whether the Appellant leaves the home, attends school or any incontinence needs he may have when he is outside of the home. The telephone nursing assessment did not provide sufficient information for the Department to review the continuing coverage of incontinent wipes for the Appellant. The Appellant's mother provided credible testimony that the Appellant goes to school, and this is where the incontinent wipes are utilized.

Accordingly, the Department's denial can not be upheld because there was insufficient information gathered during the [REDACTED], telephone nursing assessment to review continuing coverage of incontinent wipes for the Appellant. A new nursing assessment is needed to review the Appellant's request for incontinent wipes and current documentation may also be needed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly denied coverage of incontinent wipes for the Appellant.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is ORDERED to conduct a new nursing assessment and reconsider the Appellant's request for coverage of incontinent wipes.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed 10/25/2011

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.